WP(C) 4013/2007
BEFORE
HON'BLE MR. JUSTICE B.K. SHARMA

JUDGMENT AND ORDER (ORAL)

The matter relates to settlement of a daily market. According to the petitioner, he being the highest bidder in the fray, the settlement could not have been made with the respondent No. 6, whose bid was lower than his.

2. Notice Inviting Tender (NIT) was issued by the Naharkatia Town Committee (respondent No. 4) inviting tenders from the intending bidders for collection of tolls from the markets mentioned in the notice and parking fees at the entry point of Naharkatia Town from Dibrugarh-Tinsukia to Naharkatia and Namrup road, for the period from 1.4.2007 to 31.3.2008. Tenders were receipt upto 19.3.2007 and open on the same date at 2.15 PM. In this proceeding, we are concerned with Naharkatia Daily Market.

3. On opening of the tenders in presence of the tenderers or their authorized agents it was found that the petitioner was the third highest bidder with the offer of Rs. 4,47,707/-. The respondents No. 6 offered bid amount of Rs.3,45,105/-. Be it stated here that Government value of the market is Rs. 2,90,000/-. According to the petitioner since the first and the second bidders with the offer of Rs. 5,71,700/- and Rs. 5,31,707 respectively, withdraw themselves from the fray, he, became the highest bidder.

4. Being apprehensive of illegal settlement of the market with the respondent No. 6, the petitioner approached this Court by filing the writ petition being WP(C) No. 1594/2007 praying for a direction to settle the market with him. By order dated 2.4.2007, it was provided that the market shall be run by the Town Committee either by itself or through any other agency. The Chairman of the Town Committee by filing an affidavit on 11.3.2007 contended that the market should be settled with the highest bidder.

5. The writ petition was disposed of by order dated 26.6.2007 directing the Town Committee to settle the market in strict adherence to law laid down in the relevant Act as well as the Rules.

6. By Annexure-P/6 letter dated 26.6.2007, the respondent No. 6 was intimated about preliminary settlement of the market with him for two months with effect from 1.7.2007. Being aggrieved by such arrangement, the petitioner filed the writ petition challenging the validity of the same. By order dated 8.8.2007, this Court provided that the settlement made in favour of the respondent No. 6 shall not be proceeded with beyond 31.8.2007 without the leave of the Court.

7. The parties have exchanged their affidavits. This Court by order dated 17.9.2007, considering the dispute involved provided for final disposal of the matter. This is how the matter has been taken up for final disposal.

8. Mr. B.D. Konwar, learned counsel for the petitioner submits that since the petitioner is the highest bidder in the fray and the Town Committee had supported the case of the petitioner in the earlier writ proceeding, the market ought to have been settled with him. On the other hand, Mr. R. Goswami, learned counsel representing the respondent No. 6 has contended that merely because the petitioner offered a bid higher than that of the respondent No. 6, same by itself can not be the ground to settle the market with him. Emphasizing the need for consideration of various aspects of the matter, he has supported the settlement made in favour of the respondent No. 6.

9. Mr. P. Roy, learned State Counsel upon a reference to the records produc

ed by him has submitted that there is nothing wrong in making the settlement in favour of the respondent No. 6. He submits that the settlement was made provisio nally for a period of two months in view of the on going litigation. He further submits that since the period of settlement is going to be over by 31.3.2008, fo r the interest of revenue of the State, the respondent No. 6 should be allowed t o run the market.

10. I first deal with the submissions made by Mr. Konwar, learned counsel fo r the petitioner that since the Town Committee in its affidavit filed in the ear lier writ proceeding supported the case of the petitioner, it could not have tur ned around the same to settle the market with the respondent No. 6.

11. The Town Committee i.e. the respondent No. 4, in its affidavit filed thr ough the respondent No. 5 has referred to the order dated 2.5.2007 passed in the earlier writ proceeding, by which it was permitted to finalize the tender proce ss in accordance with law. It was on that basis, the Town Committee finalized th e tender process with the decision to settle the market in favour of the respond ent No. 6 initially for a period of two months. Same was done in view of the pen dency of the writ petition, which was finally disposed of by the aforesaid order dated 26.6.2007. It will be pertinent to mention here that the petitioner in th is writ petition has not mentioned anything about the order dated 2.5.2007.

12. In paragraph 10 of the aforesaid affidavit, it has been stated that the affidavit filed by the Chairman of the Town Committee in the earlier writ procee ding was without any authority. According to the present affidavit, the Chairman filed the said affidavit without discussing the matter with the Town Committee members. Thus, according to the Town Committee, the said affidavit being in the personal capacity of the Chairman is not binding on the Town Committee.

13. The above stand of the Town Committee finds support from the records pro duced by the learned State Counsel. The matter relating to settlement of the mar ket was processed in the file firstly, by putting a note to the Executive Office r of the Town Committee on 24.4.2007. Upon a consideration of the materials on r ecord including the bids offered by the tenderers, a tentative decision was arri ved at to award the contract to the respondent No. 6. Detail reasons were record s by the authority. It was pointed out that most of the tenderers offered the av erage bid of Rs. 2,99,570/- to Rs. 3,65,008/-.

14. The matter was considered with reference to the market value of Rs. 2,90 ,000/-. It was also considered that during the year 2004-05, the amount was Rs. 2,80,551/- and with 2% increase it became Rs. 2,86,162/- for the year 2006-07. C onsidering the rates of earlier years and taking into account the possible incre ase in 2007-08, the Town Committee place the respondent No. 6 at No. 1 and anoth er at No. 2 with their respective bid amounts of Rs. 3,45,105/- and Rs. 3,23,000 /- respectively.

15. The aforesaid process was initiated in terms of the liberty granted by t his Court by its aforesaid order dated 2.5.2007 about which there is no mention in the present writ petition. As noted above, the matter was finally disposed of by order dated 26.6.2007. Although, only direction was to settle the market in accordance with law, the Chairman of the Town Committee, by his note dated 3.7.2 007 commented that the market could be settled with the petitioner in terms of t he order of this Court passed in his favour. The order was never in favour of an y of the bidders, but yet the Chairman made the aforesaid note.

16. The note in the file after the aforesaid note of the Chairman rightly po inted out that the direction of the Court was not in favour of the petitioner an d as per minutes of the tender committee, the market was to be settled with the respondent No. 6. It is in this context, the plea of the petitioner that since i n the earlier round of litigation, the Town Committee supported the case of the petitioner, it could not have deviated from the said stand, will have to be cons

idered. Both in the affidavit filed by the Chairman much after the decision to s ettle the market in favour of the respondent No. 6 as well as the aforesaid note dated 3.7.2007 was in complete defiance of the collective decision of the Town Committee. In that view of the matter, the plea of the petitioner is liable to b e rejected.

17. The authority of the Town Committee upon threadbare discussion of the en tire matter decided to settle the market with the respondent No. 6. Although, th e decision was taken finally, but the settlement was made for a limited period o f two months in view of the pendency of the writ petition, which was finally dis posed of on 26.6.2007. On perusal of the records, it is not discernible that the decision making process was actuated by any malafide and/or colourable exercise of power just to favour the respondent No. 6. The view taken by the authority i s a plausible view and it cannot be said that the same is based on any arbitrary exercise of power.

18. One cannot claim any settlement merely on the basis being the highest bi dder. Various other parameters and yardsticks are involved in such matter. Unles s the decision making process initiated and completed by the authority are based on malafide, colourable and arbitrary exercise of power, the Writ Court will no t sit on appeal over such decision making process. The records produced by the l earned State Counsel have been perused. The discretion applied by the authority taking into account all relevant considerations discussed above, is sound and pl ausible

19. In Manindra Nath Upadhyaya Vs. State of U.P. reported in 1993 Suppl (1) SCC 437, the Apex Court found fault with the direction of the High Court for acc eptance of the bid of the petitioner on ground of being highest without the sati sfaction of other requisite and relevant conditions. It was observed that the Go vernment should have the liberty to deal with the matter taking into account rel evant considerations. It was left open to the authority to decide whether they w ould, in the circumstances, accept the highest bid.

20. In view of the above, I am of the considered opinion that no interferenc e is called for to the decision arrived at by the Town Committee in awarding the contract to the respondent No. 6.

21. The writ petition is dismissed, without, however, any order as to costs. Interim order passed earlier stands vacated.